

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

TWIN MED, LLC

PLAINTIFF

VS.

NO. 4:19-cv-415-KGB

**SKYLINE HEALTHCARE LLC;
PRO PROCUREMENT SERVICES, LLC;
JOSEPH SCHWARTZ, individually;
SEARCY HOLDINGS, LLC D/B/A SEARCY HEALTH AND REHAB;
LONOKE HEALTHCARE CENTER AND REHABILITATION FACILITY, LLC
D/B/A GRAND PRAIRIE CARE AND REHABILITATION;
SPRING PLACE HEALTHCARE & REHABILITATION CENTER, LLC;
HIGHLANDS OF LITTLE ROCK WEST MARKHAM, LLC
D/B/A HIGHLANDS OF LITTLE ROCK AT
MIDTOWN THERAPY AND LIVING CENTER;
BROADWAY HEALTH HOLDINGS, LLC
D/B/A BROADWAY HEALTH AND REHABILITATION AND
D/B/A BROADWAY HOLDINGS, LLC;
LAUREL BROOK HEALTHCARE & REHABILITATION CENTER, LLC;
DIERKS HEALTHCARE & REHABILITATION CENTER, LLC;
HIGHLANDS OF LITTLE ROCK SOUTH CUMBERLAND
HOLDINGS, LLC D/B/A HIGHLANDS OF LITTLE ROCK
AT CUMBERLAND THERAPY AND LIVING CENTER;
HIGHLANDS OF MOUNTAIN VIEW SNF HOLDINGS, LLC
D/B/A HIGHLANDS OF MOUNTAIN VIEW THERAPY AND LIVING CENTER;
MAGNOLIA HEALTH HOLDINGS, LLC D/B/A
MAGNOLIA HEALTH AND REHAB AND D/B/A MAGNOLIA HOLDINGS, LLC;
WHITE HALL HOLDINGS, LLC D/B/A
WHITE HALL HEALTH AND REHAB;
LINROCK HEALTH CARE & REHABILITATION CENTER, LLC;
BATESVILLE HOLDINGS, LLC
D/B/A BATESVILLE HEALTH AND REHAB;
HERITAGE OF HOT SPRINGS HOLDINGS, LLC
D/B/A HERITAGE OF HOT SPRINGS AND
D/B/A HOT SPRINGS HOLDINGS, LLC;
MINE CREEK HOLDINGS, LLC D/B/A MINE CREEK HEALTH AND REHAB;
JONESBORO HOLDINGS, LLC D/B/A JONESBORO HEALTH AND REHAB;
MADISON HEALTH & REHAB, LLC;**

**HIGHLANDS OF FORT SMITH HOLDINGS, LLC
D/B/A HIGHLANDS OF FORT SMITH THERAPY AND LIVING CENTER;
HIGHLANDS OF STAMPS HOLDINGS, LLC
D/B/A HIGHLANDS OF STAMPS THERAPY AND LIVING CENTER;
HIGHLANDS OF STAMPS, LLC
D/B/A HIGHLANDS OF STAMPS THERAPY AND LIVING CENTER;
HIGHLANDS OF ROGERS DIXIELAND HOLDINGS, LLC
D/B/A HIGHLANDS OF NORTHWEST ARKANSAS THERAPY AND LIVING
CENTER; CREEKSIDE HEALTH HOLDINGS, LLC
D/B/A CREEKSIDE HEALTH AND REHAB AND D/B/A CREEKSIDE HOLDINGS,
LLC; LINDLEY HEALTHCARE AND REHABILITATION CENTER, LLC
D/B/A LINDLEY HEALTHCARE AND REHABILITATION CENTER;
AND CROWN POINT HEALTHCARE
& REHABILITATION CENTER, LLC**

DEFENDANTS

FIRST AMENDED COMPLAINT

Twin Med, LLC (“Twin Med”) (“Plaintiff”), for its First Amended Complaint against Skyline Healthcare, LLC; Pro Procurement Services, LLC; Joseph Schwartz; Searcy Holdings, LLC d/b/a Searcy Health and Rehab; Lonoke Healthcare Center and Rehabilitation Facility, LLC d/b/a Grand Prairie Care and Rehabilitation; Spring Place Healthcare & Rehabilitation Center, LLC; Highlands of Little Rock West Markham, LLC d/b/a Highlands of Little Rock at Midtown Therapy and Living Center; Broadway Health Holdings, LLC d/b/a Broadway Health and Rehabilitation and d/b/a Broadway Holdings, LLC; Laurel Brook Healthcare & Rehabilitation Center, LLC; Dierks Healthcare & Rehabilitation Center, LLC; Highlands of Little Rock South Cumberland Holdings, LLC d/b/a Highlands of Little Rock at Cumberland Therapy and Living Center; Highlands of Mountain View SNF Holdings, LLC d/b/a Highlands of Mountain View Therapy and Living Center; Magnolia Health Holdings, LLC d/b/a Magnolia Health and Rehab and d/b/a Magnolia Holdings, LLC; White Hall Holdings, LLC d/b/a White Hall Health and Rehab; Linrock Health Care & Rehabilitation Center, LLC; Batesville Holdings, LLC d/b/a Batesville Health and Rehab; Heritage of Hot Springs Health and Rehab and d/b/a Hot Springs

Holdings, LLC; Mine Creek Holdings, LLC d/b/a Mine Creek Health and Rehab; Jonesboro Holdings, LLC d/b/a Jonesboro Health and Rehab; Madison Health & Rehab, LLC; Highlands of Fort Smith Holdings, LLC d/b/a Highlands of Fort Smith Therapy and Living Center; Highlands of Stamps Holdings, LLC d/b/a Highlands of Stamps Therapy and Living Center; Highlands of Stamps, LLC d/b/a Highlands of Stamps Therapy and Living Center; Highlands of Rogers Dixieland Holdings, LLC d/b/a Highlands of Northwest Arkansas Therapy and Living Center; Creekside Health Holdings, LLC d/b/a Creekside Health and Rehab and d/b/a Creekside Holdings, LLC; Lindley HealthCare and Rehabilitation Center, LLC d/b/a Lindley HealthCare and Rehabilitation Center; and Crown Point HealthCare & Rehabilitation Center, LLC (collectively “Defendants”), states:

INTRODUCTION

An insurance broker by trade, Joseph Schwartz aggressively leaped into the nursing home business just years ago and took over the operations of more than 150 skilled nursing facilities, including dozens here in Arkansas. This Complaint arises, upon information and belief, out of a scheme perpetrated by Joseph Schwartz and his representatives to acquire nursing homes with no intention of providing quality patient care, but for the purpose of requiring the facilities to purchase insurance from the insurance company to whom he sold his insurance brokerage company and thus, maximizing his profits from that transaction. Prior to this scheme, Mr. Schwartz had no experience in the nursing home industry. In the course of four months, he took over 19 facilities in South Dakota, 15 in Kansas and 32 in Nebraska. *See Exhibit A- “Failing care: ‘Bad Actor’ ran operations at nursing homes in Pa. for 14 months before being ousted.” Reading Eagle.* Just as quickly as he grew this troubled empire, it came down. As this house of cards fell apart and the

dust settled, Joseph Schwartz's sudden leap into the nursing home world left in its wake receiverships, unpaid vendors and patients put at risk by Mr. Schwartz's greed. *Id.*

Twin Med, LLC is a supplier of disposable medical supplies. Twin Med began working with Mr. Schwartz and his various entities in or about late 2016 or early 2017. Two years before this business relationship began, Mr. Schwartz sold his insurance company, Oxford Coverage to Hub International Ltd. Oxford sold commercial lines of insurance for the nursing home and assisted living industry. After selling his insurance business, and with no background in operating nursing homes, Mr. Schwartz began aggressively acquiring nursing home operations all over the United States. Mr. Schwartz engaged Twin Med to sell disposable medical supplies for his various entities. Later, Twin Med, like many other vendors, went unpaid when Mr. Schwartz's scheme fell apart. Mr. Schwartz and the various nursing home operations owned by Mr. Schwartz and Twin Med entered into an agreement whereby the Defendants agreed to purchase goods from Twin Med, which Mr. Schwartz personally guaranteed.

Unbeknownst to Plaintiff, the entity Defendants were nothing more than an alter ego of Mr. Schwartz and were being used by Mr. Schwartz for his own personal enrichment, by ensuring that premiums that were a part of the transaction with Oxford were paid. Plaintiff seeks to collect the debt owed by the Defendants, including Mr. Schwartz personally pursuant to his personal guarantee. In addition, Plaintiff seeks to pierce the corporate veil of the entity Defendant to reach Mr. Schwartz individually as he has misused and abused the corporate form of all of the entity Defendants in a scheme to drain the operating companies of capital and misappropriate funds for his personal ventures. If Mr. Schwartz is allowed to use the corporate entities to avoid personal liability for these debts, it would promote fraud and injustice.

PARTIES

1. Twin Med, LLC is a limited liability company organized and existing under the laws of the state of Delaware. Its sole member is Twin Med Holding Corporation, a Delaware corporation. Accordingly, its residence is the state of Delaware.

2. Upon information and belief, Separate Defendant Skyline Healthcare, LLC (“Skyline”) is a limited liability company organized and existing under the laws of the state of New Jersey. It can be served at 505 Marlboro Road, Suite 5, Wood-Ridge, New Jersey 07075. Its sole member is Joseph Schwartz. As Mr. Schwartz is a resident of New York, the residency of Skyline is New York. Skyline is subject to personal jurisdiction in this Court because it purposefully directed efforts towards Arkansas in that it entered into the agreement in question for the purpose of obtaining disposable medical goods to be provided in Arkansas to Arkansas limited liability companies operating Arkansas nursing homes.

3. Separate Defendant Pro Procurement Services, LLC (“PPS”) is a New Jersey limited liability corporation. Its sole member is Sam Rosenbaum. As Mr. Rosenbaum is a resident of New Jersey, the residency of PPS is New Jersey. PPS is subject to personal jurisdiction in this Court because it purposefully directed efforts towards Arkansas in that it entered into the agreement in question for the purpose of obtaining disposable medical goods to be provided in Arkansas to Arkansas limited liability companies operating Arkansas nursing homes.

4. Separate defendant Joseph Schwartz is an individual and, upon information and belief, is a resident of New York. Mr. Schwartz has sufficient contacts with the state of Arkansas such that he is subject to personal jurisdiction in this Court. Mr. Schwartz is the sole member of numerous Arkansas entities, including but not limited to Skyline Arkansas Holdings,

LLC. Prince of Persia Healthcare, LLC, JS Arkansas Five Healthcare, LLC and JS Highland Holdings, LLC (“Schwartz Holding entities”). The Schwartz Holding entities are either the sole member or are the sole members of the sole members of the Arkansas entities that are defendants in this case, including the following: Searcy Holdings, LLC d/b/a Searcy Health and Rehab; Lonoke Healthcare Center and Rehabilitation Facility, LLC d/b/a Grand Prairie Care and Rehabilitation; Highlands of Little Rock West Markham, LLC d/b/a Highlands of Little Rock at Midtown Therapy and Living Center; Broadway Health Holdings, LLC d/b/a Broadway Health and Rehabilitation; Laurel Brook Healthcare & Rehabilitation Center, LLC; Highlands of Little Rock South Cumberland Holdings, LLC d/b/a Highlands of Little Rock at Cumberland Therapy and Living Center; Mountain View SNF Holdings, LLC d/b/a Highlands of Mountain View Therapy and Living Center; Magnolia Health Holdings, LLC d/b/a Magnolia Health and Rehab; White Hall Holdings, LLC d/b/a White Hall Health and Rehab; White Hall Holdings, LLC d/b/a White Hall Health and Rehab; Linrock Health Care and Rehabilitation Center, LLC; Batesville Holdings, LLC d/b/a Batesville Health and Rehab; Heritage of Hot Springs Holdings, LLC d/b/a Heritage of Hot Springs; Mine Creek Holdings, LLC d/b/a Mine Creek Health and Rehab; Jonesboro Holdings, LLC d/b/a Jonesboro Health and Rehab; Highlands of Fort Smith Holdings, LLC d/b/a Highlands of Fort Smith Therapy and Living Center; Highlands of Stamps Holdings, LLC d/b/a Highlands of Stamps Therapy and Living Center; Highlands of Rogers Dixieland Holdings, LLC d/b/a Highlands of Northwest Arkansas Therapy and Living Center; Creekside Health Holdings, LLC d/b/a Creekside Health and Rehab; Lindley HealthCare and Rehabilitation Center, LLC d/b/a Lindley HealthCare and Rehabilitation Center; and Crown Point HealthCare & Rehabilitation Center, LLC (collectively “Schwartz Arkansas entities”). He also served as manager for all, or at least some, of the Schwartz Arkansas entities. Mr. Schwartz entered into an

agreement, or authorized an agent to enter into an agreement, on behalf of the Schwartz Arkansas entities, of which he has ultimate sole ownership, to procure disposable medical supplies to be used in Arkansas for the benefit of his Arkansas entities operating Arkansas nursing homes. Mr. Schwartz was aware that the agreement was to be performed in Arkansas, reaped the benefits of the agreement and guaranteed the payment for same in his personal capacity. At least some of the Schwartz Arkansas entities owned or leased real property in Arkansas. Mr. Schwartz has executed at least two Assignment of Lease and Rents documents on behalf of an Arkansas entity in which Mr. Schwartz is the sole member and executed a secured promissory note in return for a \$2.8 million loan from an Arkansas entity on behalf of other Arkansas entities. (Doc. 43-2) Because Mr. Schwartz has purposefully directed activities to and availed himself of the benefits and privileges of doing business in the state of Arkansas, he is subject to personal jurisdiction here.

5. Separate Defendant Searcy Holdings, LLC d/b/a Searcy Health and Rehab is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Searcy, Arkansas. Its sole member is Skyline CHP Holdings, LLC. The sole member of Skyline CHP Holdings, LLC is Skyline Arkansas Holdings, LLC. The sole member of Skyline Arkansas Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Searcy Holdings, LLC is New York. It was served through its manager Joseph Schwartz.

6. Separate Defendant Lonoke Healthcare Center and Rehabilitation Facility, LLC d/b/a Grand Prairie Care and Rehabilitation is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Lonoke, Arkansas. Its sole member is Joseph Schwartz. As Joseph Schwartz is a resident of New York,

the residency of Lonoke Healthcare Center and Rehabilitation Facility, LLC is New York. It was served through its manager Joseph Schwartz.

7. Separate Defendant Spring Place Healthcare & Rehabilitation Center, LLC is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Hazen, Arkansas. It was previously served through its manager Joseph Schwartz on July 16, 2019 with an affidavit of service filed attesting to same. (Doc. 32). It did not file an answer to the complaint. The Clerk's entry of default was entered against it on December 12, 2019. (Doc. 52)

8. Separate Defendant Highlands of Little Rock West Markham, LLC d/b/a Highlands of Little Rock at Midtown Therapy and Living Center is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Little Rock, Pulaski County, Arkansas. It was served through its manager or agent Joseph Schwartz and filed an answer to the complaint. Upon information and belief, its sole member is Little Ark Investments, LLC. The sole member of Little Ark Investments, LLC is JS Highland Holdings, LLC. The sole member of JS Highland Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Highlands of Little Rock South Cumberland Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

9. Separate Defendant Broadway Health Holdings, LLC d/b/a Broadway Health and Rehabilitation and Broadway Holdings, LLC is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in West Memphis, Arkansas. Its sole member is Skyline CHP Holdings, LLC. The sole member of Skyline CHP Holdings, LLC is Skyline Arkansas Holdings, LLC. The sole member of Skyline

Arkansas Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Searcy Holdings, LLC is New York. It was served through its manager Joseph Schwartz.

10. Separate Defendant Laurel Brook Healthcare & Rehabilitation Center, LLC is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Hope, Arkansas. Its sole member is JS Arkansas Five Healthcare, LLC. The sole member of JS Arkansas Five Healthcare, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Linrock Health Care and Rehabilitation Center, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

11. Separate Defendant Dierks Healthcare & Rehabilitation Center, LLC is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Dierks, Arkansas. It was previously served through its manager Joseph Schwartz on July 16, 2019 with an affidavit of service filed attesting to same. (Doc. 11). It did not file an answer to the complaint. The Clerk's entry of default was entered against it on December 12, 2019. (Doc. 51)

12. Separate Defendant Highlands of Little Rock South Cumberland Holdings, LLC d/b/a Highlands of Little Rock at Cumberland Therapy and Living Center is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Little Rock, Arkansas. Its sole member is Little Ark Investments, LLC. The sole member of Little Ark Investments, LLC is JS Highland Holdings, LLC. The sole member of JS Highland Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New

York, the residency of Highlands of Little Rock South Cumberland Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

13. Separate Defendant Highlands of Mountain View SNF Holdings, LLC d/b/a Highlands of Mountain View Therapy and Living Center is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Mountain View, Arkansas. Its sole member is Little Ark Investments, LLC. The sole member of Little Ark Investments, LLC is JS Highland Holdings, LLC. The sole member of JS Highland Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Highlands of Little Rock South Cumberland Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

14. Separate Defendant Magnolia Health Holdings, LLC d/b/a Magnolia Health and Rehab and d/b/a Magnolia Holdings, LLC is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Magnolia, Arkansas. Its sole member is Skyline CHP Holdings, LLC. The sole member of Skyline CHP Holdings, LLC is Skyline Arkansas Holdings, LLC. The sole member of Skyline Arkansas Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Magnolia Health Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

15. Separate Defendant White Hall Holdings, LLC d/b/a White Hall Health and Rehab is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Whitehall, Arkansas. Its sole member is Skyline Arkansas Healthcare, LLC. The sole member of Skyline Arkansas Healthcare, LLC is Skyline Arkansas Holdings, LLC. The sole member of Skyline Arkansas Holdings, LLC is

Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of White Hall Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

16. Separate Defendant Linrock Health Care & Rehabilitation Center, LLC is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Texarkana, Arkansas. Its sole member is JS Arkansas Five Healthcare, LLC. The sole member of JS Arkansas Five Healthcare, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Linrock Health Care and Rehabilitation Center, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

17. Separate Defendant Batesville Holdings, LLC d/b/a Batesville Health and Rehab is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Batesville, Arkansas. Its sole member is Skyline CHP Holdings, LLC. The sole member of Skyline CHP Holdings, LLC is Skyline Arkansas Holdings, LLC. The sole member of Skyline Arkansas Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Batesville Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

18. Separate Defendant Heritage of Hot Springs Holdings, LLC d/b/a Heritage of Hot Springs Health and Rehab and d/b/a Hot Springs Holdings, LLC is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Hot Springs, Arkansas. Its sole member is Skyline Arkansas Healthcare, LLC. The sole member of Skyline Arkansas Healthcare, LLC is Skyline Arkansas Holdings, LLC. The sole member of Skyline Arkansas Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a

resident of New York, the residency of Heritage of Hot Springs Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

19. Separate Defendant Mine Creek Holdings, LLC d/b/a Mine Creek Health and Rehab is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Nashville, Arkansas. Its sole member is Skyline CHP Holdings, LLC. The sole member of Skyline CHP Holdings, LLC is Skyline Arkansas Holdings, LLC. The sole member of Skyline Arkansas Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Mine Creek Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

20. Separate Defendant Jonesboro Holdings, LLC d/b/a Jonesboro Health and Rehab is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Jonesboro, Arkansas. It can be served through its manager Joseph Schwartz. Its sole member is Skyline CHP Holdings, LLC. The sole member of Skyline CHP Holdings, LLC is Skyline Arkansas Holdings, LLC. The sole member of Skyline Arkansas Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Jonesboro Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

21. Separate Defendant Madison Health & Rehab, LLC is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Little Rock, Arkansas. Upon information and belief, its members are residents of Arkansas. It was previously served through its Registered Agent of Service, Ron Burnett, 3000 Browns Lane, Jonesboro, AR 72403.

22. Separate Defendant Highlands of Fort Smith Holdings, LLC d/b/a Highlands of Fort Smith Therapy and Living Center is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Fort Smith, Arkansas. Its sole member is Little Ark Investments, LLC. The sole member of Little Ark Investments, LLC is JS Highland Holdings, LLC. The sole member of JS Highland Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Highlands of Fort Smith Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

23. Separate Defendant Highlands of Stamps Holdings, LLC d/b/a Highlands of Stamps Therapy and Living Center is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Stamps, Arkansas. Its sole member is Little Ark Investments, LLC. The sole member of Little Ark Investments, LLC is JS Highland Holdings, LLC. The sole member of JS Highland Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Highlands of Stamps Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

24. Separate Defendant Highlands of Stamps, LLC d/b/a Highlands of Stamps Therapy and Living Center is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Stamps, Arkansas. Its sole member is Little Ark Investments, LLC. The sole member of Little Ark Investments, LLC is JS Highland Holdings, LLC. The sole member of JS Highland Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Highlands of Stamps Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

25. Separate Defendant Highlands of Rogers Dixieland Holdings, LLC d/b/a Highlands of Northwest Arkansas Therapy and Living Center is a limited liability company organized and existing under the laws of the state of Arkansas that operates or operated a nursing home in Rogers, Arkansas. Its sole member is Little Ark Investments, LLC. The sole member of Little Ark Investments, LLC is JS Highland Holdings, LLC. The sole member of JS Highland Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Highlands of Rogers Dixieland Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

26. Separate Defendant Creekside Health Holdings, LLC d/b/a Creekside Health and Rehab and d/b/a Creekside Holdings, LLC is a limited liability company organized and existing under the laws of the state of Arkansas that operated a nursing home in Yellville, Arkansas. The nursing home is now operated by Community Compassion Yellville d/b/a Community Compassion Center of Yellville. Its sole member is Skyline Arkansas Healthcare, LLC. The sole member of Skyline Arkansas Healthcare, LLC is Skyline Arkansas Holdings, LLC. The sole member of Skyline Arkansas Holdings, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Creekside Health Holdings, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

27. Separate Defendant Lindley HealthCare and Rehabilitation Center, LLC d/b/a Lindley HealthCare and Rehabilitation Center is a limited liability company organized and existing under the laws of the state of Arkansas that operated a nursing home in Newport, Arkansas. Its sole member is Prince of Persia Healthcare, LLC. The sole member of Prince of Persia Healthcare, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the

residency of Lindley Healthcare and Rehabilitation Center, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

28. Separate Defendant Crown Point HealthCare & Rehabilitation Center, LLC is a limited liability company organized and existing under the laws of the state of Arkansas that operated a nursing home in Horseshoe Bend, Arkansas. Its sole member is JS Arkansas Five Healthcare, LLC. The sole member of JS Arkansas Five Healthcare, LLC is Joseph Schwartz. As Joseph Schwartz is a resident of New York, the residency of Crown Point Healthcare & Rehabilitation Center, LLC is New York. It was served through its manager and general agent Joseph Schwartz.

JURISDICTION AND VENUE

29. This Court has jurisdiction over the parties and this cause of action pursuant to 28 U.S.C. §1332 because there is complete diversity of citizenship between the Plaintiff and the Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

30. Venue is proper in this Court pursuant to 28 U.S.C. §1391.

FACTS

31. Twin Med began supplying Defendants with medical supplies in or about late 2016 or early 2017. Defendants agreed to pay those invoices.

32. On or around November 1, 2017, the parties entered into that certain Medical Supply Agreement in which Plaintiff agreed to be the exclusive provider of disposable medical supplies and other supplies to Defendants in return for Defendants' agreement to exclusively purchase said goods from Plaintiff for a term of 3 years ("Agreement"). A copy of the Agreement is attached as Exhibit B. Because of concerns with the Defendants' ability to pay for goods

provided, the Agreement provided that Mr. Schwartz would personally guarantee all of the obligations under the Agreement. Mr. Schwartz agreed and signed the personal guarantee.

33. Skyline Healthcare, LLC entered into the Agreement (“the Agreement”) “on behalf of itself and the facilities” listed in the exhibit(s) to the Agreement referred to as the “Covered Facilities.” In paragraph 8 of the Agreement, the Defendants “warrant[] [they] has unqualified legal authority to bind Skyline Healthcare, LLC and the Covered Facilities to the terms of this Agreement.”

34. Upon information and belief, Mr. Schwartz authorized and directed Sam Rosenbaum to sign the Agreement on behalf of the Defendants. At all times relevant to this matter, Mr. Rosenbaum was held out to be and authorized as an agent of Mr. Schwartz and the Defendants. He is either an actual or apparent agent with authority to bind Mr. Schwartz and the Defendants.

35. In Paragraph 2.2 of the Agreement, it provides that Plaintiff should be paid the amount owed on the Invoices within 120 days following the date of the invoice. If the payment is not made within 135 days following the date of the invoice, the Defendants agreed to pay a fee equal to a percentage the past due balance.

36. Between May 2017 and on or about January 2019, Plaintiff provided Defendants with medical supplies for use in all of the Covered Facilities, the nursing homes, listed in the Agreement.

37. Plaintiff timely sent invoices to Defendants for the supplies provided. These invoices were accepted without objection.

38. Payment was not made on some of the invoices. The time set forth in the Agreement to pay the invoices has lapsed. The invoices are due and payable.

39. The aggregate amount due to Plaintiff for outstanding invoices is in excess of \$5,066,227.24, plus interest.

40. Defendants have failed and/or refused to pay the invoices in accordance with the Agreement's terms and provisions.

41. Paragraph 5.1 of the Agreement provides that "in the event any action is undertaken to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its actual attorneys' fees and costs."

42. On page 4 of the Agreement, Joseph Schwartz signed and agreed to personally guarantee "the prompt full and complete payment of all unpaid, past due invoices and any other liabilities relating, or arising out of" the Agreement.

43. Upon information and belief, Joseph Schwartz operated, was affiliated with and served as an insurance broker or advisor to or president of a number of companies, including Oxford Coverage, Inc., Garden State Health Care Administrators, Inc. and United State Health Care Administrators.

44. Upon information and belief, Mr. Schwartz left the entity Defendants undercapitalized and misused the corporate form by diverting funds of the entity Defendants to his own personal use and benefit, including but not limited to using those funds to pay premium payments on various insurance policies through the affiliated companies.

COUNT I
BREACH OF CONTRACT- DEFENDANTS

45. Plaintiff incorporate by reference the allegations set forth in paragraphs 1-44 above.

46. Plaintiff entered into a contract with the Defendants as evidenced by Agreement attached to the Complaint as Exhibit "B".

47. Plaintiff have fully performed its obligations under the Agreement by providing disposable medical supplies and other supplies to Defendants.

48. Defendants bargained for, received, accepted, used and agreed to pay for the goods evidenced by the invoices.

49. Defendants breached the Agreement by failing and refusing to pay Plaintiff for the goods provided.

50. The Agreement provided that Plaintiff would be the exclusive supplier of covered supplies to Defendants. This exclusivity applied for the term of the Agreement, 3 years.

51. Defendants have further breached the Agreement by failing and refusing to exclusively purchase the covered medical supplies from Plaintiff.

52. As a direct, foreseeable and proximate result of the Defendants' breach, Plaintiff has incurred damages in excess of \$5,066,227.24 plus the lost profits that it would have earned had Defendants fulfilled the 3-year term of the Agreement and not breached their agreement.

53. Further, Plaintiff has been required to obtain attorneys to collect the sums due from the Defendants.

54. Plaintiff is entitled to recover its attorneys' fees, pre-judgment interest at the rate set forth in the Agreement, post-judgment interest and other expenses and costs of collection pursuant to the Agreement and Ark. Code Ann. § 16-22-308.

COUNT II
BREACH OF CONTRACT-GUARANTEE

55. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-54 above.

56. Mr. Schwartz signed a guarantee whereby he agreed to personally guarantee all debts owed to Plaintiff pursuant to the Agreement by the Defendants. *See* Exhibit "B".

57. Plaintiff has fully performed its obligations under the Agreement.

58. Mr. Schwartz breached the guarantee agreement by failing and refusing to pay Plaintiff for the amounts owed by Defendants pursuant to the Agreement despite demand by Plaintiff.

59. As a direct, foreseeable and proximate result of Mr. Schwartz's breach, Plaintiff has incurred damages in excess of \$5,066,227.24. plus lost profits.

60. Plaintiff has been required to obtain attorneys to collect the sums due from Mr. Schwartz.

61. Plaintiff is entitled to recover its attorneys' fees, pre-and post-judgment interest and other expenses and costs of collection pursuant to Ark. Code Ann. § 16-22-308 (1999 Repl.).

COUNT III **ACCOUNTS STATED**

62. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-61 above.

63. Pleading in the alternative, if the contract is not found applicable to any of the charges, an accounts stated should be found. Defendants purchased goods from Plaintiff and was billed for those purchases by invoices.

64. Invoices sent periodically to Defendants reflected all charges, credits and payments on Defendant's account.

65. Defendants did not object to these charges at the time the invoices were rendered, and thereupon, an account stated arose between the parties.

66. Plaintiff has made a demand upon Defendants to pay the amount due on the Invoices but Defendants has refused to do so.

67. Plaintiff is entitled to judgment for the amount due, \$5,066,227.24, upon account stated plus lost profits.

68. Plaintiff has been required to obtain attorneys to collect the sums due from Defendants.

69. Plaintiff is entitled to recover its attorneys' fees, pre- and post-judgment interest and other expenses and costs of collection pursuant to the Agreement and Ark. Code Ann. § 16-22-308.

COUNT IV
UNJUST ENRICHMENT- ALL DEFENDANTS

70. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-69 above.

71. Pleading in the alternative, should it be determined that the parties did not have an express contract, Defendants have been unjustly enriched.

72. Plaintiff provided valuable goods to Defendants. Defendants accepted the delivery of the goods.

73. Defendants were unjustly enriched by accepting the benefit of valuable goods from Plaintiff without paying Plaintiff for the goods.

74. Plaintiff is entitled to recover damages in the amount of the value of the goods, in excess of \$5,066,227.24.

COUNT V
PIERCING THE CORPORATE VEIL-JOSEPH SCHWARTZ

75. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-74 above.

76. Pleading in the alternative, if the Court finds that the guarantee is not enforceable, Plaintiff moves this Court to pierce the corporate veil and find that Joseph Schwartz is individually liable for the debts of the entity Defendants.

77. Separate Defendant Joseph Schwartz, individually, has failed to observe corporate formalities, acted in bad faith, diverted assets from the entity Defendants for his own person use to the detriment of Plaintiff, has abused the corporate forms to the detriment of Plaintiff and has failed to adequately capitalize the entity Defendants, which left them unable to pay their debts.

78. As a result of the actions described above, Plaintiff is entitled to recover damages requested herein directly from Mr. Schwartz.

COUNT VI- FRAUD-JOSEPH SCHWARTZ

79. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-78 above.

80. Joseph Schwartz made a false representation of material fact when during the negotiations regarding the Agreement, he or his agent told Plaintiff that he would pay for the goods when he had no intention to fulfil that promise and instead intended to divert all funds for his personal use, including paying premiums.

81. Joseph Schwartz made a false representation of material fact when during the negotiations regarding the Agreement, he or his agent told the Plaintiff that he would bill Medicaid and turn over payments to Plaintiff for goods provided when intended to use this money for his personal benefit.

82. These misrepresentations were a substantial factor in Plaintiff's decision to enter into the Agreement and provide goods to entity Defendants.

83. Plaintiff relied on these representations to its detriment and have incurred damages. Plaintiff is entitled to recover damages in the amount of in excess of \$5,066,227.24.

84. Joseph Schwartz knew or ought to have known, in light of the surrounding circumstances, that his conduct would naturally and probably result in damage to Plaintiff and he continued such conduct with malice or in reckless disregard of the consequences from which malice may be inferred.

85. Plaintiff should be awarded punitive damages against Joseph Schwartz in the amount of \$10,000,000.00 or in such amount as the Court may deem appropriate.

REQUEST FOR JURY TRIAL

86. Plaintiff requests a jury trial on all of its claims that can be tried to a jury.

WHEREFORE, Plaintiff prays that the Court enter judgment in its favor in an amount in excess of \$5,066,227.24 plus punitive damages in the amount of \$10,000,000.00 including lost profits, plus post-judgment interest, costs, attorneys' fees, and expenses. Plaintiff further requests all other appropriate relief to which Plaintiff is entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send electronic notification to all counsel of record and by U.S. Mail to Separate Defendant Pro Procurement Services, LLC at the following

Pro Procurement Services, LLC
1 Lawrence Street,
Spring Valley, NY 10977

Pro Procurement Services, LLC
c/o Registered Agent Rabin Gold
40 Vreeland Ave, Suite 104
Totowa, New Jersey 07512

Betsy Baker

Betsy Baker